...after sexual assault...

Your guide to the criminal justice system

Department of Justice Canada
Ministere de la Justice Canada

...after sexual assault...

Your guide to the criminal justice system

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Sexual assault is a crime

You have been sexually assaulted if you have been kissed, fondled or forced to have sexual intercourse against your will.

If this has happened, you probably need some information about the police and about the justice system. What are your rights? Will you have to go to court?

This book answers your questions about the law on sexual assault. You will find out how the law defines sexual assault. You will also find answers to your questions about the police investigation of a sexual assault, the arrest of the person who attacked you, court procedures and the punishment of a person found guilty of sexual assault.

Nothing can change what happened to you. But, the information in the pages that follow can at least help you to understand the criminal justice system.

Note to readers under 18

The information in this booklet on the law can only be relied on in cases involving the sexual assault of adults. Some of the general information, however, may also apply to cases involving children and young people.

With respect to children and young people, a new law on child sexual abuse came into force on January 1, 1988. This new law makes it a crime to touch children for a sexual purpose or to invite a child to touch another person for a sexual purpose. It also describes other sexual offences involving children and young people and establishes special rules of evidence for sexual crimes with victims under 18 years of age.

If you are under 18 and have been sexually assaulted, please refer to other publications and sources for information on the law.

How Can I Get Help Right Away?

- Call the police
- Go to the hospital
- Call a sexual assault centre
- Write down everything that happened to you

"Shocked" "scared" "furious" "ashamed" "confused" "disgusted" are words that victims of sexual assault have used to describe their feelings. You're* hurt. You feel alone. If you have been sexually assaulted, you need to take care of yourself.

Your first thought may be to wash and change your clothes, to get clean. If you do wash or bathe or even comb your hair, you may destroy evidence of the assault. To help the police, it is best to get help without cleaning up.

You will have to decide what to do. Here are some of the ways you can get help if you have been sexually assaulted.

Call the police

The police can take you to the hospital right away. Tell the police where you are and what happened. They will answer your call quickly.

Calling the police is the first step in the legal process. When a crime has been committed, they have a duty to report the crime and to try to find the person who did it. They will have to write a police report about what happened to you.

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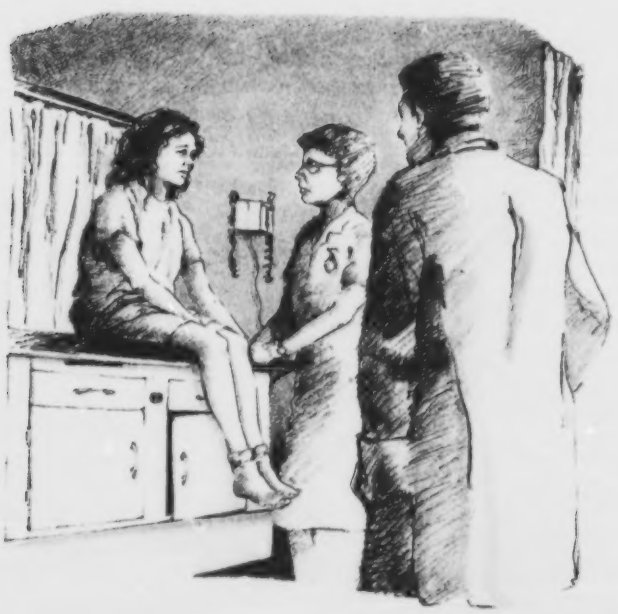
* *Statistics show that most often women are the victims of sexual assault. However, men can also be victims of this crime. This booklet is written for both women and men who have been sexually assaulted. It uses non-sexist language throughout.*



Go to the hospital

Getting medical attention is most important. The emergency ward of a hospital is **always open**. It can, however, be a busy place, so, if you have no obvious injuries, you need to be firm. Tell the nurse who is in charge of admissions exactly what happened to you. Then you will be given the care you need as soon as possible.

Some hospitals have sexual assault units where doctors, nurses and social workers have been specially trained to help you. The police, a social service centre or a sexual assault centre can tell you which hospital in your community has a sexual assault unit.

Call a sexual assault centre

You may want to call the crisis line or sexual assault centre in your community. In some places, the telephone number is on the first page of the phone book under "Emergency Numbers". Trained counsellors are usually available to give you support and help **24 hours a day**. They have experience talking to people who have been sexually assaulted. They can give you information you need and answer your questions.

If you live in a rural community or a city which doesn't have a crisis centre, you can ask the telephone operator for the number of a centre in the nearest city. The long distance phone call may give you the name of someone closer to home who has been trained to help you. Many centres accept collect calls.

There is a list of sexual assault centres on page 101 of this booklet.

Write down what happened to you

You probably feel that you will never forget a single detail of what just happened. It's all too clear in your mind. Write down everything you can remember about what happened as soon as you can anyway. Writing down what you remember is important for three reasons.

1. Taking the time to write now can help you sort out your emotions and help you deal with what's just happened to you.
2. If the case goes to trial many months from now, your notes will help you remember the details of what happened.
3. Something you write down may become important in the police investigation.

The Police Investigation of a Sexual Assault

1. What happens when I call the police?
2. What evidence will the police want?
3. Do I have to have a medical examination?
4. Can I go to the hospital without calling the police?
5. What is a statement?
6. Will I be involved in any further investigation?

1. What happens when I call the police?

Police officers closest to where you are will answer your call for help as soon as possible. The police will want to take you to the hospital right away. On the way there, they may ask you questions about the assault. You may find some of their questions embarrassing or insensitive. The police are taught to remain uninvolved. Even though you are the victim of the crime, their concern is also to enforce the law and to find the person who assaulted you.

In some police forces, there are specially trained officers who investigate sexual assault complaints. The officers who answer your call can get in touch with these specially trained police.

The police make a report:

- to record exactly what happened
- to see that all available evidence is preserved.

2. What evidence will the police want?

The police want to collect all the evidence of the assault they can. Although you may desperately want to do so, **do not change or throw out your clothes. Do not clean yourself, particularly in the area(s) of attack: e.g., vagina, penis, anus or mouth. Do not comb your hair. Do not wash your hands. Do not take any medicine, drugs or alcohol to calm yourself**. If you do any of these things, you may destroy evidence about the nature of the assault or the identity of the attacker.

You may be the only witness to a violent crime, a crime that was done to you. That's why the police are asking you so many questions and trying to collect all the evidence they can.

You may feel nervous around the police. Try to remember that their job is to protect everyone from criminals. They do want to help you.

There's more information about the kinds of questions the police will ask you on page 18.

3. Do I have to have a medical examination?

Getting medical attention quickly is important. During the medical examination a doctor can find and treat any injuries you may have suffered. The examination should include tests for venereal disease, pelvic infection and internal damage. Tell the doctor if you have any specific sore spots. For instance, if your hair was pulled, your scalp may feel very tender. The doctor can tell you what to do to help you heal. The doctor can also tell you about tests for pregnancy and for infections. You may want to have these tests in a few weeks.

The medical examination is thorough and can take more than half an hour. You can ask to have a nurse, counsellor or friend with you. **The police will wait outside.**

In order to preserve the evidence of the sexual assault for court, the doctor will do different tests. In many hospitals, a sexual assault kit is on hand so that the doctor can make sure no evidence is forgotten.

During the medical examination, the doctor should:

- ask you about your general health, allergies to medication, etc.
- ask you what happened
- check for bruises, cuts and other signs of force
- take the necessary blood samples (to check for disease)
- take vaginal, oral and/or anal smears (to check for semen)
- take samples of your fingernails and pubic and scalp hair.

Each sample is carefully sealed, labelled and sent to special police laboratories for tests. The results from these *forensic** tests may help to:

- identify the accused
- provide evidence of the amount of force used during the assault
- determine the time of the assault.

The police may need to keep the clothes you are wearing as evidence (stains, tears, fingerprints). They may suggest that you get someone to bring you some other clothes from home. If the police do arrest and bring your attacker to trial, your clothes will probably not be returned until after the trial.

The police may also want to take pictures of your injuries right away. Either a police photographer will come to the hospital or the photographs will be taken at the police station. You might feel humiliated and upset by the picture taking. Having someone with you can help. The pictures are important because long after your injuries have healed, these photographs will be evidence of the sexual assault.

4. Can I go to the hospital without calling the police?

Yes. Whether or not you have called the police, **you have the right to complete medical care** at the hospital.

A sexual assault is a serious criminal offence, however, and the police should be notified. The best time is immediately, at the scene of the crime, especially if the police are to collect all the evidence they need. If you go to the hospital first, you can call the police from there.

* *All the words in italics in this booklet are defined in the glossary on page 75.*

5. What is a statement?

If you have called the police, after the medical examination the police will ask you to come to the police station to make a statement. A *statement* is the record of your complaint. It includes everything you can remember about the sexual assault. Your statement is the basis of the police investigation and may be used later in court. If you are not physically or emotionally well enough to come to the police station, the police will make other arrangements for you.

Your statement will be taken by the investigating officer or officers assigned to your case. The police will need to know:

- what happened
- where
- when
- if you know who attacked you
- your description of the attacker(s) (height, weight, skin colour, hair colour, eye colour, smell, accent, speech pattern and any unusual features)
- whether a weapon was used
- what you said and did
- what the attacker(s) said and did.

Some questions may seem weird or embarrassing. Try to keep in mind that the police need all the details of what happened. If you don't know the person who attacked you, details that may seem unimportant to you may help the police find the person. In court, details may help prove the guilt of your attacker.

Try to answer all the questions accurately and clearly.

If the police ask questions that you feel don't have anything to do with the assault, ask why you are being asked for that information. If you are pressed for some answers and you are not sure what to say or are uncomfortable, say so. Writing these questions down and talking them over with someone knowledgeable, like a sexual assault centre counsellor, may help you understand why they were asked.

After hearing what happened the police will either ask you to write out what you told them or they will type up the conversation. In either case, you will be asked to read through the written statement and then sign it.

Before leaving the police station, **ask the police for their names and phone numbers**. Later, you may remember other details of the assault you forgot to tell them. You can call the investigating officers to give them this extra information. You can also call to find out what is happening with their investigation.

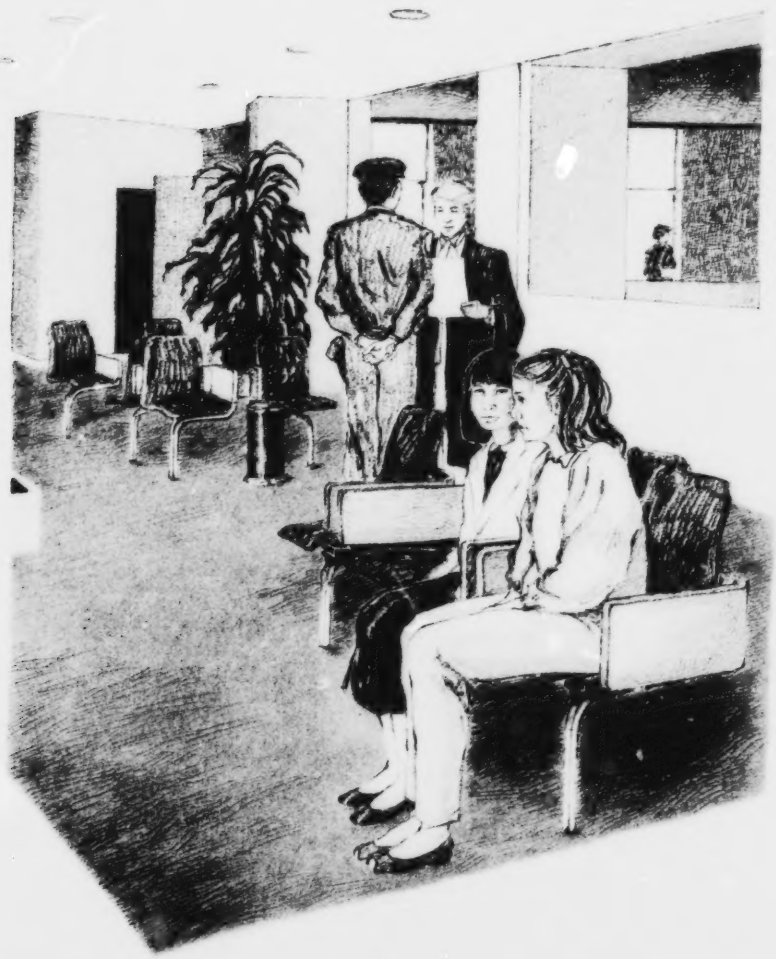
6. Will I be involved in any further investigation?

As soon as possible, the police will go with you to the scene of the assault to help their search for evidence. They will want to be shown the exact spot where the sexual assault took place.

If you do not know the person who attacked you, the police may ask you to:

- look at photos of people (referred to as *mug shots*)
- view a line-up of people whose features may be similar to those of the person who attacked you
- describe your attacker's features to an artist who will make a drawing from your description. Police artists with the skills required to do these drawings usually work only in major cities.

The Law on Sexual Assault



1. How does the law define sexual assault?
2. What evidence proves that I did not consent?
3. What if I didn't fight back?
4. Can my husband or wife be charged with having sexually assaulted me?
5. What if I didn't report a sexual assault right away but want to now?

1. How does the law define sexual assault?

First, assault means the intentional use of force on another person against his or her will. Touching, slapping, kicking, punching or pushing are all examples of assault. It is also an assault to threaten to use force. For instance, if someone threatens to beat you up, this can be an assault even if the threat is not carried out.

If a person tried to assault you but was prevented from actually doing so, he or she can be charged with attempted assault or attempted sexual assault.

Kissing, fondling, sexual intercourse, anal intercourse and oral sex are all examples of sexual assault, if done **without your consent**.

A person may be charged with **sexual assault** if:

- you were forced to kiss, fondle or have sexual intercourse with the person or he or she kissed or touched you in a sexual way without your consent (no sign of physical injury or abuse).

A person may be charged with **sexual assault with a weapon, threats to a third party or causing bodily harm**, if:

- you were sexually assaulted while he or she used a weapon (an imitation or a real weapon) or threatened to use a weapon
- he or she threatened to hurt someone else, for instance, your child

- he or she physically hurt you
- he or she was with another person or other people who also sexually assaulted you.

A person may be charged with **aggravated sexual assault** if, while you were sexually assaulted:

- you were wounded, crippled, disfigured, or brutally beaten
- your life was endangered.

Depending on what happened, a person may be charged with several crimes. For instance, if you were grabbed in an elevator, taken to someone's apartment and forced to have sexual intercourse, the attacker could be charged with sexual assault and kidnapping.

2. What evidence proves that I did not consent?

Sexual assault is a crime because the sexual activity happened without your permission. You know you didn't agree to what happened but, according to the law, the court must decide for itself that you did not agree.

Your consent to the sexual activity must be freely given. You did not consent if you were afraid to fight back or if you were frozen with fear. And, you did not necessarily consent to sexual intercourse or anal sex with someone because you held hands, kissed or fondled each other. **No one has the right to force you to engage in any sexual activity against your will.** You always have the right to say "no".

Your consent is not freely given if you had no choice but to do what the person said.

Whether or not you consented to the sexual activity may be an important issue at the trial. The court will consider your testimony and all the evidence including answers to questions like these:

- Did you kick? scream? argue? scratch? try to run away?
- Was the attacker bigger and/or stronger than you?

- Was the attacker in a position of authority over you? (For instance, your teacher or boss.)
- Did the attacker have a gun? a knife? another kind of weapon?
- Did the attacker threaten to hurt someone else close to you? your child? a friend?
- Did the attacker break into your home? or get into your home by pretending to be someone else?
- Were you lied to? For instance, you agreed to go home with someone only to find a number of people there waiting for you?

If you did fight back, you will not be charged with assault because you hit, kicked or injured an attacker. The law says you can use the force that is necessary to fight off an attack. You are acting in *self-defence*.

3. What if I didn't fight back?

It is not always possible to fight back. Every situation is different and everyone reacts differently. **Your lack of resistance does not mean that you consented to the assault.**

For a person to be convicted of sexual assault, however, the court must decide two separate questions. First, the court must believe that you did not agree to the sexual activity. Second, the court must decide that your attacker knew that you were not consenting.

If you didn't fight back, it might be more difficult for the court to believe that the accused understood your "no". For instance, if the person who attacked you was someone you knew, with whom you had had sexual relations before, how did the person know that this time you did not consent? The question is less likely to be asked if you were attacked by a

stranger. Someone who grabs you in a parking lot, hurts you and forces you to have sexual intercourse will have a hard time convincing the court that you consented to the attack.

4. Can my husband or wife be charged with having sexually assaulted me?

Yes. Since the *Criminal Code* was changed in January 1983, a person who sexually assaults his or her spouse has committed a crime. Whether you were living together when the sexual assault occurred is not important. Your lack of consent is the key element of the crime. Remember, the court must believe not only that you did not consent to have sexual relations with your spouse but also that your spouse understood that you had not given your consent.

5. What if I didn't report a sexual assault right away but want to now?

It is never too late to report a crime. Even if you decided not to go to the police right after you were sexually assaulted, you may change your mind.

The police will take your statement and then consider if there is enough evidence on which to proceed. When you don't report a sexual assault right away, the physical signs of the assault may have disappeared. It is therefore harder for the police to collect evidence of the assault. It may be harder for them to find the person who assaulted you. They may want to know why you waited before reporting the crime.

Waiting days, weeks or months before reporting a sexual assault makes it much more difficult to prove in court that the assault took place. That's why the police want you to report a sexual assault immediately. However, even at a later date your evidence is important. It could lead to the conviction of the person who attacked you, and it might be of help to the police in investigations of other sexual assaults.

The Arrest of the Suspect

1. What happens to the person suspected of having assaulted me?
2. Will the suspect be charged?
3. Will the suspect be arrested?
4. Will the accused be kept in jail?
5. What if the police do not charge the suspect?
6. What if the police can't find the attacker?
7. Will my name be in the newspapers?

1. What happens to the person suspected of having assaulted me?

If you were attacked by a stranger, the police will have to use your description and the evidence they have collected to try to find the person. If you know your attacker, the police may be able to find the person easily.

Once a suspect has been found, the police will usually question the person at the police station right away. The police may also decide to take fingerprints and photographs of the suspect.

The suspect may be required to line up with other "suspects" in front of you. Many police stations have special rooms with one-way glass so that the people in the line-up cannot see you looking at them. In police stations without line-up facilities, you may be asked to walk by an office or through a waiting room. The police will ask you if you recognize anyone. If you don't see your attacker or are not sure, say so. The person may not be in the line-up.

Having you identify your attacker in a line-up is only one of many ways the police collect evidence for the trial.

You may find it upsetting to see the person who sexually assaulted you. If the police ask you to come to the police station to see a line-up, you can ask a friend, relative or counsellor to come to the station with you. So that your

identification of the suspect is not influenced by anyone, your support-person may not be allowed to be with you when you look at the line-up. He or she can wait outside for you.

2. Will the suspect be charged?

Sometimes, the police will question a suspect without *laying charges*. They may decide to wait for lab results, and they may want to speak to witnesses and check out other information first. Before laying charges, the police may consult with the *Crown Attorney*. The Crown Attorney is a lawyer who represents the state.

The police will consider all the evidence they have collected. Charging a person with a criminal offence is a serious accusation, and the police must believe that they have enough evidence to justify the charge.

3. Will the suspect be arrested?

Once the police are satisfied that there is enough evidence against a person, they will lay charges and make an arrest. The accused may be kept in jail until a court appearance. This court appearance takes place within hours after charges have been laid. At this first court appearance, the judge will decide if the accused should be kept in jail until the next court hearing.

4. Will the accused be kept in jail?

Under Canadian law, a person is innocent until proven guilty. Because of this presumption of innocence, there must be very good reasons for keeping someone in jail until a judge or jury decides on guilt or innocence. These reasons are:

- that the accused is unlikely to show up for trial if released or
- that it is in the public's interest to hold the accused in jail; for instance, if a judge believes that the accused is likely to commit another serious crime or to try to influence a witness.

The accused's criminal record and the kind of injuries you suffered may be taken into account by the court. If you are worried that the accused may try to hurt you or stop you from testifying, you should tell the Crown Attorney your fears. At this stage, you won't be asked to go to court to testify. The Crown Attorney can present the facts to the court. In most cases, the Crown must explain, *show cause*, to the court why the accused should be kept in jail until the trial.

Unless the court finds that there are very good reasons for keeping the accused in jail, the accused must be let go. But the court can set conditions on this freedom. For instance, the court may ask that money, *bail*, be deposited with the court as a guarantee that the accused will come back for the trial. And, the court can tell the accused to stay away from you. This *no-contact order* forbids the accused from calling you or going to your home or work place.

If the accused doesn't obey the order, tell the police. They can arrest the accused. When the accused appears in court for failing to obey the no-contact order, the conditions of release may be changed. For instance, more bail may have to be deposited or, this time, the court may decide to keep the accused in jail.

5. What if the police do not charge the suspect?

If there is not enough evidence against the accused, the police will not be able to lay charges. This does not mean that the police did not believe you. It means that they did not think they would be able to prove, in court, that the suspect is guilty. You can ask them why they think there is not a strong case.

If the decision is taken not to *prosecute*, you have the right to lay charges yourself. You will have to go to a justice, an officer of the court with some of the powers of a judge, to present your information in writing and under oath. However, if the

police have decided not to prosecute, you will probably not be successful on your own. A lawyer can give you advice about what to do.

Whether or not the person is found, and whether or not the case goes to court and there is a conviction, you may be able to get financial compensation from the government. You may have a right to compensation because you have been the victim of a crime. The information on page 67 may be helpful to you.

6. What if the police can't find the attacker?

The police cannot always find the person who sexually assaulted you. Sometimes they only have your description to go on. Without a name, fingerprints, a car licence number or other identification, it is very hard to find a person. However, the police keep all reports of crimes, and there is a chance that the attacker will be found later.

7. Will my name be in the newspapers?

As a general rule, the public has the right to go to court and see what is going on there. The media also have a right to report on what happens in court. However, sexual assault cases are a bit different. The court knows that having your name in the paper can make things even more difficult for you.

The Crown Attorney can ask the judge to order the media to keep your name out of the news. The law requires the judge to decide in each case whether there should be a *no-publication order*. If the judge agrees to a no-publication order, you cannot be referred to by name in media reports. The reports cannot give any information about you, such as your address or the names of your relatives, that would help people identify you. **It is a crime to disobey a no-publication order.**
You should ask the Crown Attorney about keeping your name out of media reports. The first time you go to court make sure the judge knows that you want a no-publication order.

Before the Trial

1. What if the accused pleads guilty?
2. What happens if the accused is under 18?
3. Where will the case against an adult accused be heard?
4. What is a preliminary inquiry?
5. How will I know when the preliminary inquiry is scheduled?
6. Is the Crown Attorney my lawyer?
7. Will I meet the Crown Attorney before the preliminary inquiry?
8. When will the trial occur?

1. What if the accused pleads guilty?

In many criminal cases there is no trial. This happens because the accused decides to plead guilty, to confess to the crime. **If the accused pleads guilty, there is no need for a trial and you won't have to testify in court.** (You may, however, be needed to testify as a witness at the *Sentencing Hearing*. This hearing is discussed on page 61.)

Plea bargaining also helps bring about guilty pleas. Plea bargaining is a negotiation between the defence counsel and the Crown Attorney. In return for a guilty plea, the Crown may withdraw some of the charges against the accused, reduce the charge to a lesser offence or ask the court for a lighter sentence. Plea bargaining may begin at the earliest stages of the court process and go on until the trial itself.

It may be in everyone's interests to have the case settled before the trial, providing the resolution is a just one. You will not have to go to court to testify. The state avoids a long and costly trial. The accused can begin serving the sentence right away. You won't be a part of these discussions but you can find out about them by talking to the Crown Attorney. The police can tell you who the Crown Attorney is in this case.

2. What happens if the accused is under 18?

Under the *Young Offenders Act*, a person under 18 who is suspected of having committed a crime, will have a hearing in youth court. This hearing is like a trial, and you will be called as a witness. The judge decides if the young person is responsible for the crime and decides what punishment is appropriate.

Young offenders can be punished in a number of different ways. They can be sent to guarded facilities run by the government. They can be taken from their families and placed in special care institutions or, they can be required to work in their community or follow a court-ordered program.

In a few special cases, a person under 18 may be tried in "adult" court. A judge in youth court may decide to send a case to "adult" court because the young person has been found guilty of other crimes before or because of the seriousness of this crime.

3. Where will the case against an adult accused be heard?

Sexual assault cases are tried in the criminal courthouse in your community. Different criminal courts handle different trials, depending on the crime and the possible punishment.

In Canada, there are two categories of criminal offences: serious crimes called *indictable offences* and less serious crimes called *summary conviction offences*. Murder and bank robbery are examples of crimes that are considered to be indictable offences. Shoplifting an inexpensive item like a record album is a crime that would most likely be prosecuted as a summary conviction offence.

A sexual assault can be either an indictable offence or a summary conviction offence. It depends on what happened. If you were seriously injured during the assault or if weapons were involved, then the crime would be an indictable offence.

If a stranger sitting next to you on the bus tried to kiss you and put a hand between your legs, the sexual assault would likely be tried as a summary conviction offence.

The maximum punishment for a summary conviction is six months in jail and a $2,000 fine. The maximum punishment for the most serious indictable offence is life in prison.

Besides the different punishments, indictable offences and summary conviction offences are different because the trials take place in different courts. A summary conviction trial is usually held soon after the crime happened. Since an indictable offence is a more serious crime, with stiffer penalties, there are other procedures. An accused charged with an indictable offence can decide to be tried by a judge and jury. The accused also has the right to hear the basis of the Crown's case at a hearing before the trial. This hearing is called a *preliminary inquiry*.

4. What is a preliminary inquiry?

A preliminary inquiry will occur a few months after the charges have been laid against the accused. The purpose of this hearing is to see if the Crown has enough evidence to justify a trial. It also gives the accused and the *defence lawyer* a chance to hear the details of the case against the accused. If there is enough evidence, the judge will send the accused to trial. If not, the charges will be dropped.

Don't be surprised if the preliminary inquiry does not go ahead as planned. This could mean that the accused is going to plead guilty. Or, it could mean that the defence lawyer has decided not to hear evidence at a preliminary inquiry, and the Crown Attorney has agreed to go directly to trial.

5. How will I know when the preliminary inquiry is scheduled?

Normally, you will have to go to court for this hearing. You will receive a *subpoena*, a legal document that tells you to be at court at a certain time on a certain day to give the court the information you have. Prior to the hearing, the investigating police officers may arrange for you to meet the Crown Attorney. If you are not contacted, you can call the Crown Attorney's office to arrange a meeting.

6. Is the Crown Attorney my lawyer?

When a crime has been committed, society, the state, prosecutes the person accused of having committed the crime. The Crown Attorney is the lawyer who represents the state at the trial. It is the Crown's job to present the facts of the crime to the court. While concerned with your welfare, the Crown Attorney's first obligation is to the public. **The Crown Attorney is not your lawyer**. However, you are a key witness for the Crown at the trial.

As a witness, you do not need your own lawyer. If you do want legal advice about the police investigation, the trial, or how to get financial compensation, you can, of course, consult a lawyer.

7. Will I meet the Crown Attorney before the preliminary inquiry?

The Crown Attorney may want to meet with you before the preliminary inquiry. At the meeting, the Crown can:

- explain the court procedure to you
- go over evidence
- review your statement
- give you an idea of the kinds of questions to expect in *cross-examination*.

This meeting will help you prepare to be a witness in court.

You can ask questions about the inquiry if you are not sure what is going to happen or what you should say or do. If the Crown Attorney uses unfamiliar words, you should ask what they mean.

The Crown may decide not to meet with you before the preliminary inquiry. Instead, a meeting will probably be arranged before the trial.

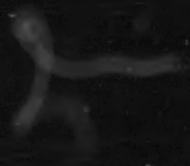
If you are going to be a witness at the preliminary inquiry, you may wish to refer to the information on court procedures in the next two chapters.

8. When will the trial occur?

If the accused is charged with an offence punishable on summary conviction, there is no preliminary inquiry. A trial date will be set, and the case will go ahead within a few months.

If the accused is charged with an indictable offence, there will be a longer delay. First, there may be a preliminary inquiry. Since the courts are overcrowded, the trial may not take place for several months. The police or the Crown Attorney's office should keep you informed. If they haven't been in touch with you for a while, and you are concerned about the trial date, you can call the investigating officers handling your case or call the Crown Attorney's office. **You have a right to know what is happening in the case.**

Preparing for the Trial



1. What principles of law apply to a criminal trial?
2. Do I have to testify in court?
3. How should I prepare for the trial?
4. Will the trial be open to the public?
5. Who sits on the jury?
6. Will the trial be in French or English?
7. What does a witness have to do?

1. What principles of law apply to a criminal trial?

The same principles of law apply to a sexual assault trial as apply to any other criminal trial. These rules are designed to prevent errors in court, protect the rights of the accused and ensure that a trial is fair.

Under Canadian criminal law, a person is **innocent until proven guilty.** That means that although you see the accused as the guilty person, the court will not. From the court's point of view, the person is innocent, and it has only been suggested, *alleged,* that the suspect has committed a crime. After hearing the evidence, the judge, or the jury, will decide if a crime did occur and if the accused is guilty of that crime.

The judge, or the jury, must be convinced *beyond a reasonable doubt* that the accused is guilty. This is a high standard of proof and means that if there is a reasonable possibility that the accused is innocent then he or she must be acquitted, found not guilty.

The accused has a right to a lawyer. The defence lawyer can cross-examine the Crown's witnesses. The defence can also present witnesses to show that the Crown has not proved guilt beyond a reasonable doubt and that the accused is not guilty. **The accused has a right to make a full defence to the charge.**

All these rules can make the court process seem slow, complicated or even silly. But, the rules are there to protect innocent people from being punished for something they did not do.

2. Do I have to testify in court?

As the victim of the crime, your testimony is a very important part of the Crown's case against the accused. You are the Crown's key witness.

Before the court hearing date, a subpoena will be given to you telling you when and where to go to court. **You cannot refuse to go to court** once you have received a subpoena. If you disobey a subpoena or refuse to testify, you can be charged with *contempt of court* and put in jail.

This may seem unfair but requiring witnesses to testify is the only way to make sure that all the facts in a case will be presented to the court. Speak to your own lawyer, a sexual assault counsellor or the Crown Attorney if you are worried about being a witness.

Witnesses at a criminal trial can have travel costs and a meal allowance paid by the court. You may also receive a small witness fee. But, if you miss a day of work, you won't be compensated by the court. Ask the Crown Attorney about having some of your expenses as a witness paid by the court. And check with your union or your employer about a paid leave of absence. Some employees have contracts which give them the right to go to court as a witness without losing a day's pay or without using a sick day or vacation time.

3. How should I prepare for the trial?

You need to keep in touch with the police or the Crown Attorney's office so that they can tell you when you can expect to have to go to court. **If you move or change your phone number, tell the police or the Crown Attorney**. Remember, you are the key witness for the Crown. You have the right to be kept informed. You also have the right to be properly prepared for your testimony in court.

If you gave evidence at the preliminary inquiry, you already know what is likely to happen in court. You can ask for a copy of the testimony you gave at the preliminary inquiry. This copy of the court proceedings is called a *transcript*. The Crown may ask you to read the transcript to refresh your memory of your earlier testimony.

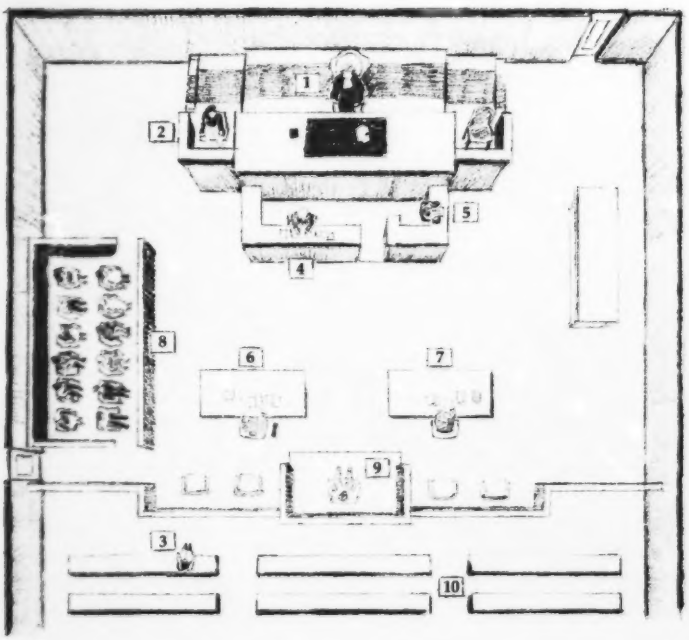
If you did not meet with the Crown Attorney before the preliminary inquiry, you may want to do so now. It is usually a good idea to talk to the Crown Attorney before the trial. (You will find more information about this meeting on page 40.)

Be good to yourself. Bring someone to court who can give you moral support while you are on the witness stand. A sexual assault centre counsellor, social worker, relative or friend can go to court with you.

Sometimes witnesses are asked to wait outside the courtroom until called to give evidence. This way, one witness will not be influenced by hearing what another witness says. If your court supporter is not a witness, he or she will usually be allowed to stay in the courtroom during your testimony. Your supporter can keep you company during breaks. At these times, you will be told not to discuss your evidence with anyone. Do not talk to other witnesses about what they are going to say in court. If a judge finds that a witness has been talking about his or her testimony with another witness, the testimony of the witness may not be trusted.

Be prepared for an *adjournment*. You may be disappointed if you were counting on being heard right away. Very often hearings do not go ahead as planned. There are many reasons for a delay. A case before yours could be taking longer than expected. An important witness might be absent. The trial may be re-scheduled to another courtroom or put off until another day.

Everyone has a role in court



1. Judge Runs the courtroom. Applies the law. Instructs the jury on how to reach a verdict. If there is no jury, decides on guilt or innocence. Decides the punishment.

2. Witnesses People who saw the crime being committed or who can give other evidence which will help to show whether the accused is guilty or not guilty.

3. Victim The person against whom the crime has been committed. A key witness for the prosecution.

4. Clerk of the Court Calls the court to order. Swears in the witnesses. Marks and files photographs, clothing, medical reports and other items produced in court as evidence.

5. Court Reporter/Court Stenographer Keeps a record of everything that is said at the trial. If the decision is appealed, this record will be printed up for the appeal court judges.

6. Defence Lawyer Represents the accused. Tries to show that the Crown did not prove the guilt of the accused beyond a reasonable doubt.

7. Crown Attorney/Prosecutor Represents the state/society. Presents the facts about the crime to the court.

8. Jury Members of the public who have been chosen by both the Crown Attorney and the defence lawyer to decide whether the accused is guilty or not guilty.

9. Accused The person charged with having committed a crime. The accused is innocent until proven guilty in court.

10. Public Anyone can watch a trial. This guarantees that the trial is open and fair.

4. Will the trial be open to the public?

All trials are open to the public. People you do not recognize may therefore be in the courtroom. The general public will only be excluded from the court if the judge feels it is absolutely necessary.

Remember, you or the Crown Attorney on your behalf can request that your name or some details of the trial not be reported by the media. A no-publication order can forbid the media to identify you in their reports on the trial. Even if you already asked for a no-publication order at the preliminary inquiry, the trial judge will have to repeat the order for the trial.

5. Who sits on the jury?

In some cases, the accused can decide to be tried by a judge and jury. The *jury* is chosen from among members of the public who have been called to court for jury duty. The names of potential jurors are read out, one by one. The Crown Attorney and defence counsel each have a chance to accept a juror or to challenge the juror's impartiality. Once 12 jurors have been chosen, the trial begins.

6. Will the trial be in French or English?

The trial will be in either French or English depending on the language spoken by the accused and the province in which the trial is held. In principle, the accused has a right to a trial in his or her own language.

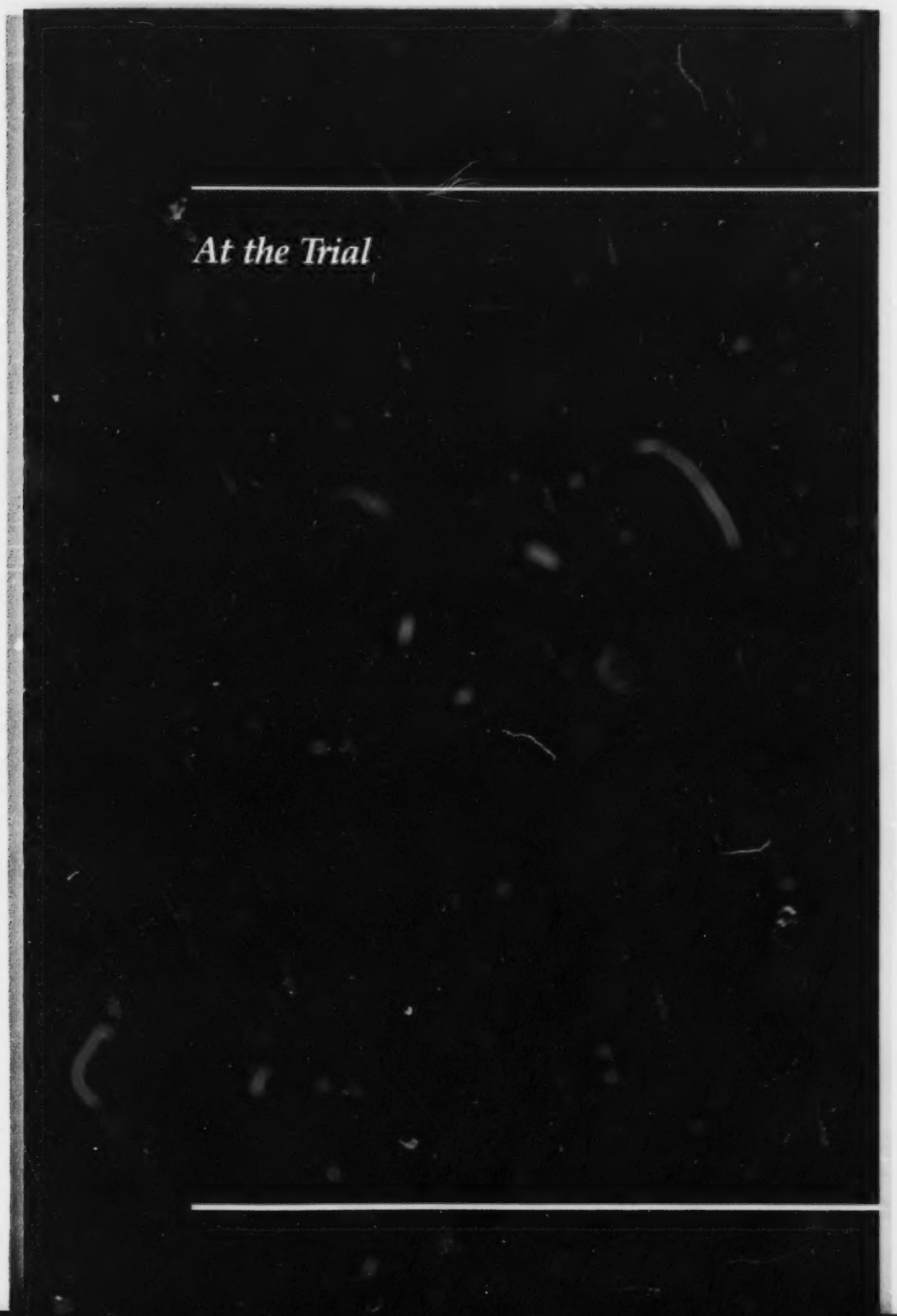
As a witness, you can give your testimony in whatever language you feel most comfortable. The court will provide an interpreter to translate your testimony if necessary. If you think language might be a problem, speak to the Crown Attorney about it a few days before the trial.

7. What does a witness have to do?

When it is your turn to testify, your name will be called out by the clerk of the court. All witnesses give their testimony from the witness stand in front of the court.

Before you testify, you will be asked to swear to tell the truth. Christians are asked to swear to tell the truth on the Bible. People from the Jewish faith swear on the Old Testament. People who practice other religions may swear on the appropriate religious document. People who have no religion are asked to solemnly *affirm* that they will tell the truth.

It is important to tell the truth. Breaking this promise on the witness stand and telling a lie on purpose is called *perjury*. Perjury is a crime.


At the Trial

1. When do I tell the court what happened to me?
2. What happens in cross-examination?
3. Will I be asked questions about my sex life?
4. What happens after my cross-examination?
5. When is the trial over?

1. When do I tell the court what happened to me?

During the Crown Attorney's presentation of the evidence against the accused, you will be asked to go to the witness stand. This is your chance to tell what happened.

After you have been sworn in, the Crown Attorney will ask you simple questions. You may have already discussed these questions before the trial:

- Tell the court what happened. When? Where? What did you say? What did you do?
- What did the person look like?
- What happened then? What did you do?

Take your time. Answer the questions as clearly and simply as you can. Try to stay calm. You may be asked to speak up so that the judge and court can hear you. The microphones you may see in the courtroom are to record what happens in court and do not make your voice louder. You won't be heard if you whisper.

If you don't understand a question, you should ask the Crown to repeat or reword it. Even though it may be difficult or painful to talk about details of the assault, your testimony is important evidence at the trial.

It may be upsetting for you to see the accused again. Try to look at the judge and concentrate on your answers.

After the Crown has finished with his or her questions, the defence lawyer will be able to ask you questions. This is called cross-examination.

2. What happens in cross-examination?

Cross-examination can be an unsettling experience, even for experts. The defence lawyer's job is to point out every possible reason why the judge or the jury should find the accused not guilty. Questions may focus on your truthfulness and on any changes in your story. Defence counsel may suggest that:

- you were mistaken in your identification of the accused
- you consented to what happened
- the accused could have reasonably believed that you consented.

Cross-examination is easier when you are prepared, because you know what to expect. Although there may be minor variations in your story, the essentials are the same. You know what happened.

The cross-examination may take a long time. The questions may get longer and harder to answer. They may be about things you don't remember. The defence lawyer may shout or get angry or ask you a lot of questions one after the other without giving you time to answer. The Crown Attorney may object to some of these questions. The judge will decide if you have to answer a question.

Take your time. Listen carefully. Keep your answers simple. Only answer questions you are asked. Don't volunteer answers and don't make up an answer because you don't know something. Tell the truth. If you don't understand a question, ask for an explanation. If you feel that a question is improper, you can ask the judge whether or not you must answer. You may find being a witness stressful but **your confidence in the truth of what you say will help you to stand up to any cross-examination**.

If the cross-examination is very long and difficult and you are tired, you may ask the judge for a break.

3. Will I be asked questions about my sex life?

As a general rule, questions about your sex life are not allowed in court. However, if the accused is someone you know and someone with whom you have had sexual relations before, you may be asked questions about these sexual activities.

You cannot be asked questions about your sexual activities with anyone else unless the judge decides to allow these questions.

If the defence wants to present this evidence to the court, the judge must hold a behind-closed-doors hearing. The jury and the public are excluded from this special hearing, which is called a *voir dire*. You cannot be asked to give evidence at this hearing. The judge will listen to the arguments made by the Crown and the defence lawyer and then decide if the evidence can be heard in court.

If the judge decides the evidence can be heard, the trial will begin again. You can now be asked questions about your sex life with someone else besides the accused. If the judge decides the evidence cannot be heard, the trial will go on but no one will be able to ask you questions about your sex life. No other witnesses can be asked these kinds of questions either.

4. What happens after my cross-examination?

After the defence lawyer has finished the cross-examination, the Crown Attorney may want to ask you a few more questions. The new questions can clear up any confusion that came up during the cross-examination.

The Crown will then call other witnesses. The police who investigated the assault may be called as witnesses. The doctors or nurses at the hospital or people who saw you just after the attack may also be required to testify. Evidence which

supports your testimony will be presented to the court, including:

- photos
- clothing
- medical reports
- laboratory test results.

Each Crown witness can be cross-examined by defence counsel. When the Crown has called every one of its witnesses, the Crown's case is complete.

Now, the accused has a chance to present a defence to the Crown's evidence. The defence lawyer may call witnesses to try to show that the accused is not responsible for the crime. **The accused does not have to testify at the trial.** That is because the law says that no one can be forced to give evidence proving his or her own guilt at his or her own trial. Also, once the accused is a witness, the Crown Attorney is allowed to ask questions about the accused's criminal record. Otherwise, this information cannot usually be brought up in court.

The accused may testify to present proof that he or she was somewhere else at the time of the attack and therefore could not have done it. This is called an *alibi*.

The Crown has a chance to cross-examine any of the witnesses the defence calls.

5. When is the trial over?

After all the witnesses have been heard, the Crown Attorney and the defence lawyer make final statements. These statements summarize the evidence that has been presented. The Crown argues that the accused is guilty of the offence. The defence lawyer tries to show that the Crown has not proven that the accused is guilty beyond a reasonable doubt.

If there is a jury, the judge tells the jury what laws apply and how to weigh the evidence they have heard. This is called *instructing the jury.* The case is then given to the jury to decide if the accused is guilty. The members of a jury will meet until they reach a decision.

If there is no jury, the judge must review all the evidence and decide whether or not the accused is guilty. Sometimes a judge reaches a decision right away but often a judge may take several days or weeks to reach a decision. When a judge does not make a decision right away, the judge is *reserving judgment.*

The Court Decision

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1. What happens if the accused is found guilty?
2. What punishment will a guilty person receive?
3. Who gets the money if there is a fine?
4. What if the accused is found not guilty?
5. Can the court decision be changed by another court?

1. What happens if the accused is found guilty?

Sometimes, the judge will decide on the punishment, the *sentence*, right away. More often, sentencing is put off for a few weeks.

A probation officer may be asked to prepare a *pre-sentence report*. In that case, the probation officer will speak to people who know the accused and then write up a history. Information on the accused's background — place of birth, schooling, lifestyle and past criminal activity — can help the judge decide the most appropriate punishment.

You may be asked to testify at a sentencing hearing. The judge may want to know what happened during the sexual assault. Were you hurt? Were you so badly hurt that you had to miss work? How long was it before you could return to your usual activities? These facts can also help the judge decide on an appropriate punishment.

In deciding on the sentence, the judge will consider whether or not the person found guilty of sexual assault has been found guilty of a crime before. If so, is there a past conviction for sexual assault? Repeat offenders are usually given a harsher punishment.

2. What punishment will a guilty person receive?

The law gives a judge a great deal of choice in deciding the most appropriate punishment for each case. Although the judge can decide on the punishment from a wide range of options, the maximum possible sentence depends on the crime.

You may want to refer to the description of the sexual assault crimes on page 23 or to the sexual assault sections of the *Criminal Code* reprinted on page 91, when you read the following table.

Crime	Maximum Sentence
aggravated sexual assault	life in prison
sexual assault with a weapon, threats to a third party or bodily harm	14 years in prison
sexual assault tried as an indictable offence	10 years in prison
sexual assault tried as a summary conviction offence	6 months in jail and a $2,000 fine

Using these maximum punishments as a guide, a judge can decide on the length of the prison sentence. The judge can also fine the accused or insist that the person report to a probation officer regularly.

When the maximum punishment for a crime is 14 years in prison or longer, the minimum sentence a judge can give is an order to report to a probation officer for a set period of time. This is called a suspended sentence with probation. If an accused does not obey the probation order, the judge can give another sentence.

When the maximum penalty is less than 14 years in prison, the minimum sentence a judge can give is an absolute discharge. An absolute discharge means that the person is free to go and does not have a record for a criminal conviction.

3. Who gets the money if there is a fine?

When a judge orders a person found guilty of a crime to pay a fine, the state collects and keeps the money . As a victim of crime, you may be entitled to compensation under the criminal injuries compensation fund. You also have a right to sue, in civil court, the person who attacked you (see page 68 for more information).

4. What if the accused is found not guilty?

If the accused is acquitted, found not guilty, it means that there was not enough evidence before the court to prove the guilt of the accused beyond a reasonable doubt. Remember, proof beyond a reasonable doubt is a very high standard of proof. **An acquittal does not mean the attack did not occur.**

If you are afraid that the accused might try to get back at you after the trial is over, speak to the police or the Crown Attorney.

5. Can the court decision be changed by another court?

Yes.The accused or, in some cases, the Crown can ask the court of appeal to review the decision or the sentence given by the court that heard the case. The appeal must be filed in writing within 30 days of the trial court decision. The court of appeal does not always agree to hear an appeal. If it does, it will use the transcript of the trial and arguments from the lawyers to decide whether or not the trial court made a mistake. Witnesses are hardly ever called to testify.

The court of appeal can agree with the trial court decision, can change the sentence or can order a new trial. If there is a new trial, you may have to testify again.

Getting Financial Compensation

1. Can I get financial compensation from the government because I was a victim of crime?
2. Can I get financial compensation from the person who attacked me?

1. Can I get financial compensation from the government because I was a victim of crime?

As a result of the assault, you may have suffered physically and emotionally. You may also have had to miss days at work and repair or replace damaged property. Governments have established crime victims' compensation funds that can give you money to cover some of your losses. The rules for compensation vary across the country. In general:

- All the provinces and territories, except Prince Edward Island, have funds to pay victims some money to compensate them for being victims of crime. Compensation can cover pain and suffering, and expenses and property damage caused by crimes.
- A police report is usually an essential part of your request for compensation. **Unless you called the police right away after the assault, your claim may be rejected.**
- In most cases, you have one year from the date of the assault to file your claim for compensation.
- You are eligible for compensation even if your attacker is not identified or found.
- Your right to compensation is independent of what happens at the trial of your attacker. You are eligible for compensation even if the accused is found not guilty.
- If the compensation board decides to hold a hearing about your claim, it may be a good idea to get legal advice.

The amount of the award (money) varies according to the circumstances of the case and the province in which the assault occurred. For more information about criminal injuries compensation funds, call the fund in your province or ask the police or the Crown Attorney's office. Although the Crown's

office can give you information about the compensation fund, the Crown Attorney is not your lawyer and cannot represent you at fund hearings.

There is a list of the funds on page 97.

2. Can I get financial compensation from the person who attacked me?

You may want to consult a lawyer, legal aid clinic or community law office about taking a civil action.

In a civil action, you ask the court to order the person who assaulted you to pay you a sum of money. This money is to compensate you for your damages and for your pain and suffering. Your damages may include not only the costs of replacing ruined clothing, but also money lost because you were unable to work for a while.

In a civil case, the standard of proof is lower than in a criminal trial. You will have to prove that it is more likely than not that events happened as you say. The fact that the accused was not charged with a criminal offence or has not been found guilty in criminal court does not necessarily mean you will be unsuccessful in your action for damages in civil court.

You can only take a civil action if you can identify the person who attacked you and if you know where to find the person.

In some situations, the law says that people like landlords, bar owners and employers must take precautions to make sure no assaults take place on their property or on property for which they are responsible. If the proper steps were not taken to protect you, you can sue for damages.

If you have already received money from a victims' compensation fund, you may have to repay it if you receive money in a civil action. Check with the compensation fund.

Conclusion

In this booklet we have outlined and explained the police and court procedures that you may experience as a victim of sexual assault.

Now you know more about the law and the criminal justice system. While this information can help you through a difficult time, it is by no means complete. There are many people trained to talk to you who can do more. After reading this booklet, you may want to contact:

- a sexual assault centre
- a distress telephone line
- the police
- the victims' assistance officer or social worker with your local police force
- a lawyer
- a community law clinic
- a mental health centre
- your family doctor
- a social worker
- a women's centre

Definitions of Legal Terms

This glossary gives the definition of words you are likely to hear in court. Many words have more than one meaning. This list gives you the definition you will probably need.

Abrogate
To repeal a law. An abrogated law is no longer in force.

Absolute discharge
The lightest sentence that can be given to a person found guilty of a criminal offence. The person is free to go and no conviction is registered.

Accused
A person who is charged with a crime.

Acquittal
A judgment by the court that the accused is **not guilty** of the charge.

Adduce evidence
To present proof.

Adjournment
The hearing is temporarily stopped until another time or another day.

Affirmation
A legally binding promise to tell the truth. (A person who does not want to swear to tell the truth on a Bible or another religious document makes a solemn affirmation to tell the truth.) (see also "oath")

Alibi
Evidence from the accused and other witnesses that the accused was somewhere else when the crime was committed and therefore could not have done it.

Allege
To suggest that something happened or that a person is guilty of a crime.

Appeal
A review of the trial decision by a higher court.

Appearance notice
An order that tells the accused to go to court at a specific time to answer charges that have been laid.

Assault
The intentional or threatened use of force against another person without his or her consent.

Bail
Money or property deposited with the court as a guarantee that the accused will come back for a hearing or trial.

Beyond a reasonable doubt
The level of proof needed to find a person guilty of having committed a crime.

Canadian Charter of Rights and Freedoms
Part of Canada's Constitution which guarantees certain rights and freedoms.

Charge
A formal accusation that a person has committed a specific crime.

Compensation
Money given to make up for loss (property damage or physical or emotional injury).

Complainant
The person who states that a crime has been committed.

Composite drawing
A picture that an artist draws of a suspect based on the victim's or a witness's description.

Conditional discharge
A person found guilty of an offence can be ordered to obey certain conditions for a specific period of time. This is instead of a prison term or other punishment.

Confession
A statement made by the accused admitting guilt. A confession may be allowed as evidence in court.

Consent
The crime of sexual assault has been committed only if sexual activity has occurred without the consent of the complainant. Therefore, in sexual assault cases, the court must consider whether or not the complainant consented (agreed) to the sexual activity.

Contempt of court
Interfering with the administration of justice or ignoring the rules of the court.

Conviction
A judgment by the court that the accused person is guilty of the charge.

Corroborating evidence
Evidence that confirms or strengthens evidence already given to the court.

Counsel
A lawyer, legal advisor.

Court of first instance
The trial court where the evidence is presented.

Criminal Code
A federal law which sets out most criminal offences in Canada. Some criminal offences are described in other federal laws.

Cross-examination
Both the Crown and the defence counsel have the right to question (cross-examine) a witness called by the other side.

Crown
The state or the state's representative at the trial. (See also "Crown Attorney".)

Crown Attorney
The lawyer representing the Crown. At the trial, the Crown Attorney presents the facts about the crime to the court. Also referred to as the Crown Prosecutor, Crown Counsel, or simply, the Crown.

Defence counsel
The lawyer representing the defendant/the accused person.

Defendant
A person against whom a legal proceeding has been taken.

Evidence
Testimony by witnesses, or objects identified by witnesses which are presented to the court to help the court reach a decision.

Examination-in-chief
The evidence of a witness given in court. During the examination-in-chief, a witness is asked questions by the lawyer who called the witness. (see also "cross-examination")

Forensic
Medical procedures and scientific testing done for use in court.

Guilty
The decision by the judge or the jury that the accused committed the crime. An accused can admit he or she did the crime by pleading guilty.

Hearing
A proceeding. The presentation of evidence in court, for example, a preliminary inquiry, a trial, a sentencing hearing.

Indictable offence
The *Criminal Code* divides offences into two categories: indictable offences and summary conviction offences. An indictable offence is the more serious criminal offence. The punishment for indictable offences can be from two years in jail to life imprisonment. (see also "summary conviction offence")

Information
A formal accusation charging someone with having committed a crime. (**Laying an information** means presenting, under oath, a written complaint to a judge.)

Instruct the jury
After all the evidence has been presented, the judge explains to the jury the laws that apply to the case.

Intermittent sentence
A prison term of 90 days or less given to a person convicted of an offence. An intermittent sentence allows the person to serve the prison term in intervals (for example, on weekends) over a longer period of time.

Judge
A person with the authority to hear evidence and decide cases in court.

Judgment
The decision of the court in a legal proceeding.

Jury
A group of people chosen by the Crown Attorney and the defence lawyer from a pool of eligible jurors who are ordinary citizens. The jury listens to the evidence presented at a trial, listens to the judge's instructions on how to apply the law and then decides whether the accused is guilty or not guilty.

Justice of the Peace
An officer of the court who has some of the powers of a judge.

Laying charges
To accuse a person of having committed a crime.

Legal aid
Legal services provided to people who cannot afford a lawyer. Each province and territory has a legal aid plan; each has different rules for eligibility.

Mug shots
Photographs of people on police files.

No-contact order
A court order preventing the accused from seeing or speaking to someone.

No-publication order
A court order preventing the media from presenting certain information (often the identity of the victim of a crime) to the public.

Oath
A legally binding promise to tell the truth made by swearing on the Bible or other religious document, for example, the Koran. A person who does not want to swear on a religious document makes an "affirmation". (See also "affirmation".)

Offence
A crime.

Parole
The release of a person from prison before the end of the sentence. The person continues serving the sentence outside prison but under supervision. The released prisoner must obey specific conditions of parole or he or she will be sent back to prison.

Perjury
To tell a lie in court after having sworn to tell the truth. A person who has committed perjury can be punished with up to 14 years in prison.

Plea
The answer given by an accused when charged with a criminal offence – "guilty" or "not guilty".

Plea bargaining
Negotiations between the defence counsel and the Crown Attorney concerning the charges against the accused and the plea.

Preliminary inquiry
A hearing to determine whether or not there is enough evidence against an accused to justify holding a trial.

Pre-sentence report
A description of the accused's family life and personal situation, prepared by a probation officer, which the judge uses to help in deciding an appropriate sentence.

Probation
A punishment given to a person convicted of an offence which requires the person to obey certain conditions but does not require him or her to pay a fine or to spend time in jail.

Prosecute
To conduct legal proceedings against a person charged with a criminal offence.

Psychiatric assessment
A description of the accused's state of mind, prepared by a mental health professional, which the judge uses to help decide if the accused can stand trial.

Rape
Penetration of the vagina by a penis without the consent of the woman. The definition of sexual assault includes the act of rape.

Remand
Adjournment, to put off a hearing or trial until another time.

Reserve judgment
A judge hearing a case may decide to take some time to do research, study the law or review the evidence presented at the trial before making a decision.

Self-defence
A person can use the force that is necessary and reasonable under the circumstances to fight off an attack. Therefore, hitting, kicking or forcefully resisting a person who is committing a sexual assault is not against the law. It is acting in self-defence.

Sentence
The punishment given to a person convicted of a crime.

Sentencing hearing
A hearing held after the accused has been found guilty of a crime. The judge can hear evidence to help decide on an appropriate punishment.

Sexual relations
Intimate sexual contact with another person including kissing, touching of the sex organs, oral sex and vaginal or anal intercourse.

Show cause hearing
A hearing where the Crown Attorney must convince the court that the accused should be kept in jail until the trial.

Statement
A description of events given to the police. Usually a statement is in written form and is signed by the person giving the statement.

Subpoena
An order of the court telling a person when and where he or she must appear as a witness.

Summary conviction offence
A less serious criminal offence with a possible maximum punishment of six months in jail and or a $2,000 fine. (see also "indictable offence")

Suspect
A person thought to have committed a crime.

Suspended Sentence
A punishment given to a person convicted of an offence which does not require the person to spend time in jail.

Testimony
Statements made in court by a witness under oath.

Transcript
A written copy of court proceedings.

Trial
A hearing where both sides present evidence and the court makes a decision.

Venereal disease
An infection that may be acquired through sexual relations.

Verdict
The decision of a judge or a jury as to the guilt or innocence of the accused.

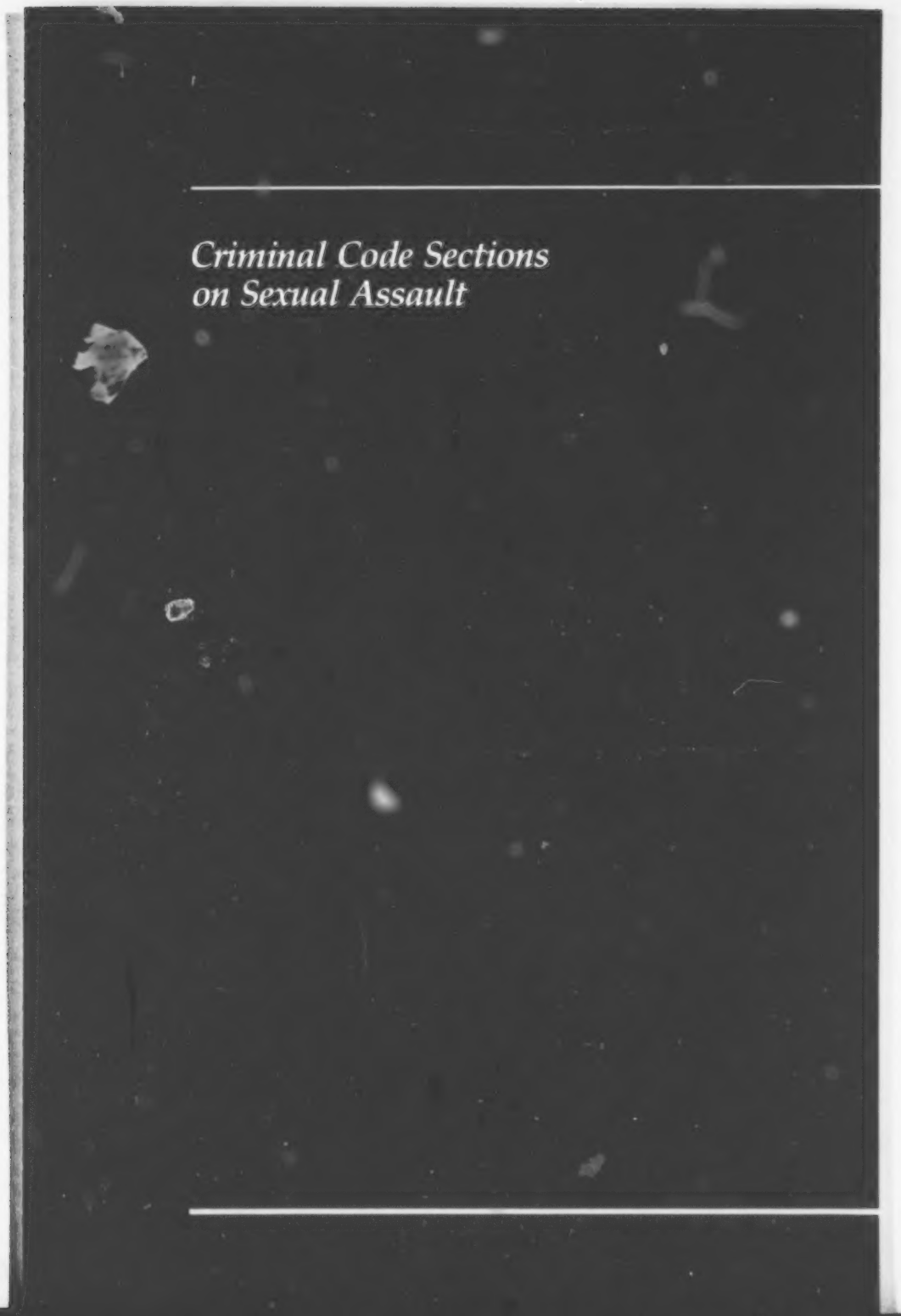
Victim
A person against whom a crime has been committed.

Voir dire
A special hearing at which the judge decides whether evidence can be presented at the trial. In sexual assault cases a voir dire may be held behind closed doors.

Warrant for arrest
An order of a justice of the peace or judge giving the police permission to arrest someone.

Witness
A person who testifies in court because he or she has some information about the case.

Young Offenders Act
A federal law which sets out how young people will be treated if they are suspected of having committed a criminal offence. The *Young Offenders Act* applies to young persons from their twelfth birthday until their eighteenth birthday. Provincial laws apply to children under 12 suspected of having committed a criminal offence.


Criminal Code Sections
on Sexual Assault

Sexual Assault

246.1 (1) Every one who commits a sexual assault is guilty of
(a) an indictable offence and is liable to imprisonment for ten years; or
(b) an offence punishable on summary conviction.
(2) Where an accused is charged with an offence under subsection (1) or section 246.2 or 246.3 in respect of a person under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge unless the accused is less than three years older than the complainant.

Sexual Assault With a Weapon, Threats to a Third Party or Causing Bodily Harm

246.2 Every one who, in committing a sexual assault,
(a) carries, uses or threatens to use a weapon or an imitation thereof,
(b) threatens to cause bodily harm to a person other than the complainant,
(c) causes bodily harm to the complainant, or
(d) is a party to the offence with any other person,
is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Aggravated Sexual Assault

246.3 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.
(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

Corroboration Not Required

246.4 Where an accused is charged with an offence under section 150 (incest), 157 (gross indecency), 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

Rules Respecting Recent Complaint No Longer Apply

246.5 The rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated.

No Evidence Concerning Past Sexual Activity

246.6 (1) In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless

(a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;

(b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or

(c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where that evidence relates to the consent that the accused alleges he believed was given by the complainant.

(2) No evidence is admissible under paragraph (1)(c) unless

(a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(b) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

(6) In this section, "newspaper" has the same meaning as in section 261.

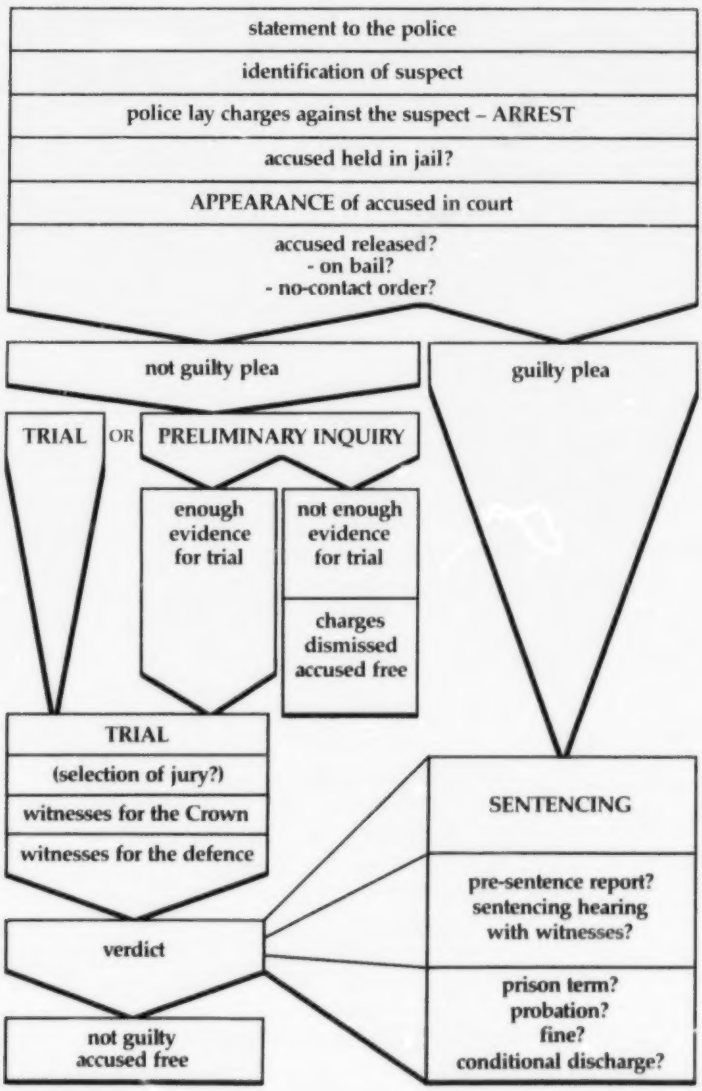
Reputation of Victim

246.7 In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

Spouse May Be Charged

246.8 A husband or wife may be charged with an offence under section 246.1, 246.2 or 246.3 in respect of his or her spouse whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

The justice process after a sexual assault has been reported to the police



Compensation Funds for Victims of Crime

Crime Compensation Board
P.O. Box 5955
319 Duckworth Street
St. John's, NEWFOUNDLAND
AIC 5X4
(709) 726-3524

Criminal Injuries Compensation Board
Box 985
l660 Hollis Street
Halifax, NOVA SCOTIA
B3J 2V9
(902) 424-4651

Crime Victim Compensation
Office of the Attorney General
P.O. Box 6000
Centennial Building
Fredericton, NEW BRUNSWICK
E3B 5H1
(506) 453-3606

Service de l'indemnisation des victimes d'actes criminels
524, rue Bourdages, Pièce R-9
Québec (QUÉBEC)
G1K 7E2
(418) 643-9890

Criminal Injuries Compensation Board
17th Floor, 439 University Avenue
Toronto, ONTARIO
M5G 1Y8
(416) 965-4755

Criminal Injuries Compensation Board
Suite 208
960 Portage Avenue
Winnipeg, MANITOBA
R3G 0R4
(204) 774-3565

Criminal Injuries Compensation Board
Sturdy Stone Centre
112 - 3rd Avenue North
Saskatoon, SASKATCHEWAN
S7K 2H6
(306) 664-5153

Crime Compensation Board
9833 – 109th Street
Edmonton, ALBERTA
T5K 2E8
(403) 427-7217

Criminal Injuries Compensation Board
c/o Workers' Compensation Board
6951 Westminster Highway
Richmond, BRITISH COLUMBIA
V7C 1C6
(604) 276-3129

Territorial Compensation for Victims of Crime Authority
Yukon Workers' Compensation Board
Suite 300 – 4110 – 4th Avenue
Whitehorse, YUKON
Y1A 4N7
(403) 667-5224

Justice and Public Services
Government of Northwest Territories
Legal Division
Box 1320
Yellowknife, NORTHWEST TERRITORIES
X1A 2L9
(403) 873-7466

Sexual Assault Crisis Centres

There is not enough room to list all the resources available in Canada to someone who has been sexually assaulted. This is a list of sexual assault emergency numbers across the country. If there is no sexual assault centre in your area, your local emergency shelter, transition house, women's centre or community centre can help. Call them or call a sexual assault centre long distance. Some accept collect calls and all can tell you if there is someone specially trained to help you in your community.

Note: Someone is there to answer your call 24 hours a day at most of the numbers listed below. However, a few numbers are only answered during office hours. This list was updated in January 1988.

Newfoundland

St. John's Rape Crisis and Information Centre
St. John's
(709)-726-1411

Labrador

Happy Valley Rape Crisis Committee
Happy Valley
(709)-896-8483

Prince Edward Island

P.E.I. Rape and Sexual Assault Crisis Centre
Charlottetown
(902)-566-8999

Nova Scotia

Service for Sexual Assault Victims
Halifax
(902)-425-0122

Pictou Rape Line
Stellarton
(902) 752-2233

New Brunswick

Fredericton Rape Crisis Center
Fredericton
(506)-454-0437

Québec

Mouvement contre le viol
Montréal
(514)-842-5040

Sexual Assault Centre/Centre pour les victimes d'agression sexuelle
Montréal
(514)-934-4504

Viol/Secours Haute-Ville,
Québec
(418)-692-2252

Centre féminin du Saguenay
Chicoutimi
(418)-545-6444

Comité contre la violence
Chicoutimi-Nord
(418)-545-1575

Assaut Sexuel Secours
Val d'Or
(819)-825-6968

Point d'appui
Rouyn
(819) 762-8443

Centre d'aide et de lutte contre
les agressions sexuelles de l'Outaouais
Hull
(819)-771-1773

La Vigie
Valleyfield
(514)-371-4222

Centre d'aide et de prévention des assauts sexuels
Châteauguay
(514)-691-8258

Centre d'aide et de lutte contre les agressions
à caractère sexuel
St-Hubert
(514)-445-6056

Recours, femmes agressées
Coaticook
(819)-849-4783

Centre d'aide et de lutte contre les agressions
à caractère sexuel
Sherbrooke
(819)-563-9999

Centre d'aide et prévention des agressions sexuelles
Granby
(514)-375-3338

Maison d'accueil le Mitan
Ste Thérèse
(514)-435-3651

Centre d'aide aux victimes d'agressions à caractère sexuel
Trois-Rivières
(819)-373-1232

Ontario

Sexual Assault Care Centre
Toronto
(416)-323-6040

Toronto Rape Crisis Centre
Toronto
(416)-964-8080

Mississauga Hospital
Sexual Assault Team
Mississauga
(416)-848-7493

Oshawa-Durham Rape Crisis Centre
Oshawa
(416)-725-2241

Sexual Assault Centre
(Hamilton and area)
Hamilton
(416)-525-4162

Scugog District Rape Crisis Centre
Port Perry
(416)-579-8006

Niagara Region Rape Crisis Centre
Niagara Falls
(416)-356-9662

Windsor Sexual Assault Crisis Centre
Windsor
(519)-253-9667

Chatham-Kent Sexual Assault Centre
Chatham
(519)-354-8688

Sarnia-Lambton Sexual Assault Crisis Centre
Sarnia
(519)-337-3320

Sexual Assault Centre London
London
(519)-438-2272

Guelph/Wellington Women in Crisis
Guelph
(519)-836-5710

Barrie and District Rape Crisis Line
Barrie
(705)-737-0464

North Bay Sexual Assault Centre
North Bay
(705)-476-3355

Sudbury Sexual Assault Crisis Centre
Sudbury
(705)-675-1323

Timmins Sexual Assault Centre
Timmins
(705)-264-9080

Thunder Bay Physical and Sexual Assault Crisis Centre
Thunder Bay
(807)-344-4502

Women's Place
Kenora
(807)-468-7233

Sexual Assault Support Centre
Ottawa
(613)-234-2266

Ottawa Rape Crisis Centre
Ottawa
(613)-238-6666

Lanark County Interval House and Sexual Assault Centre
Carleton Place
(free calls in 613 area)
(613)-257-5960
(800)-267-7946

Kingston Sexual Assault Centre
Kingston
(613)-544-6424

Peterborough Rape Crisis Centre
Peterborough
(705)-876-9111

Manitoba

Sexual Assault Crisis Program
Winnipeg
(204)-786-8631

YWCA - Rape Crisis Service
Brandon
(204)-727-5014

Thompson Rape Crisis Center
Thompson
(204)-778-7273

Saskatchewan

Regina Sexual Assault Line
Regina
(306)-352-0434

Saskatoon Sexual Assault and Information Center
Saskatoon
(306)-244-2224

Sexual Assault Service
Prince Albert
(306)-764-1011

North East Crisis Intervention Center*
Melfort
(306)-752-9455

South West Crisis Services*
Swift Current
(free calls in Southwest Saskatchewan)
(306)-778-3833
(800)-552-7437

West Central Crisis Center Inc.
Kindersley
(306)-463-4357

Battleford and Area Sexual Assault Center
North Battleford
(306)-446-4444

Alberta

Calgary Sexual Assault Center
Calgary
(403)-244-1353

Sexual Assault Center of Edmonton
Edmonton
(403)-423-4121

Central Alberta Sexual Assault Center
Red Deer
(403)-340-1120

Lloydminster Sexual Assault Center
Lloydminster
(403)-875-1277

Grande Prairie P.A.C.E. Crisis Line*
Grande Prairie
(403)-539-6666

British Columbia

Vancouver Rape Relief and Women's Shelter
Vancouver
(604)-872-8212

WAVAW Rape Crisis Center: Vancouver
Vancouver
(604)-875-6011

Victoria Women's Sexual Assault Center
Victoria
(604)-383-3232

Mid-Island Sexual Assault Center
Nanaimo
(604)-753-0022

Cowichan WAVAW
Duncan
(604)-748-7273

Sexual Abuse Support Service
Parksville
(604)-248-2093

Kamloops Sexual Assault Counselling Center
Kamloops
(604)-374-9600

Nelson Community Services
Nelson
(604)-352-3504

Terrace Sexual Assault Center
Terrace
(604)-635-4042

Fort St. John Rape and Sexual Abuse Center
Fort St. John
(604)-785-8811

Yukon

Whitehorse Crisis Line*
Whitehorse
(403)-668-9111

Northwest Territories

HELP LINE*
Yellowknife
(403)-873-3555

** These centres offer services to anyone in crisis, including someone who has been sexually assaulted.*